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*Counsel to the Debtors and  
 Debtors in Possession*

IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

- - - - - X  
 In re: : Chapter 11  
 :  
 CIRCUIT CITY STORES, INC., : Case No. 08-35653 (KRH)  
et al., :  
 :  
 Debtors. : Jointly Administered  
 - - - - - X

**MOTION TO SEAL**

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors")<sup>1</sup> hereby move (the "Motion") for entry of an order substantially in the form of Exhibit A hereto, pursuant to sections 107(b)(1) of

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Proper ties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc.(6796), Sky Venture Corp. (0311), PRAHS, Inc.(n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512). The address for Circuit City Stores West Coast, Inc. is 9250 Sheridan Boulevard, Westminster, Colorado 80031. For all other Debtors, the address was 9950 Mayland Drive, Richmond, Virginia 23233 and currently is 4951 Lake Brook Drive, Glen Allen, Virginia 23060.

title 11 of the United States Code (the "Bankruptcy Code") and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") authorizing the Debtors in the above-captioned case to file certain documents under seal. In support of the Motion, the Debtors respectfully represent:

**JURISDICTION AND VENUE**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018.

**BACKGROUND**

3. On November 10, 2008 (the "Petition Date"), the Debtors filed voluntary petitions in this Court for relief under chapter 11 of the Bankruptcy Code.

4. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108.

5. On November 12, 2008, the Office of the United States Trustee for the Eastern District of Virginia appointed a statutory committee of unsecured creditors (the "Creditors' Committee"). To date, no trustee or examiner has been appointed in these chapter 11 cases.

6. On April 20, 2010, the Debtors and Activision Publishing, Inc. and Activision Entertainment Holdings, Inc. (collectively "Activision") entered into a settlement agreement and stipulation (the "Settlement Agreement").

#### **RELIEF REQUESTED**

7. By this Motion, the Debtors respectfully request entry of an order pursuant to section 107(b) and Bankruptcy Rule 9018 granting the Debtors leave to file under seal the Settlement Agreement.

#### **BASIS FOR RELIEF**

8. Section 107(b) of the Bankruptcy Code authorizes the Court to issue orders to protect entities from potential harm caused by the disclosure of confidential information. In particular, section 107(b) provides that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may -  
(1) protect an entity with respect to a trade secret or confidential

research, development, or commercial  
information.

. . . .

11 U.S.C. § 107(b)(1).

9. In addition, pursuant to Rule 9018 of the Federal  
Rules of Bankruptcy Procedure:

On motion or on its own initiative, with  
or without notice, the court may make any  
order which justice requires . . . to  
protect the estate or any entity in  
respect of a trade secret or other  
confidential research, development, or  
commercial information . . . .

FED. R. BANKR. P. 9018.

10. In granting relief under section 107(b) of the  
Bankruptcy Code, "[t]he court determines whether the subject  
documents fall within the provisions of § 107(b) and the  
appropriate remedies if they do." In re Barney's, Inc., 201  
B.R. 703, 707 (Bankr. S.D.N.Y. 1996). If the documents in  
question fall within the parameters of section 107(b), "the  
court is required to protect a requesting party and has no  
discretion to deny the application." In re Orion Pictures  
Corp., 21 F.3d 24, 27 (2d Cir. 1994) (emphasis in original);  
see also In re Lomas Fin. Corp., 1991 WL 21231, at \*2  
(S.D.N.Y. Feb. 11, 1991) (noting the broad scope of the term  
"commercial information"). Public access to the  
confidential record should be denied if "closure is

essential to preserve higher values and is narrowly tailored to serve that interest." In re Washington Post Co., 807 F.2d 383, 390 (4th Cir. 1986) (quoting Press-Enterprise I, 464 U.S. 501, 510 (1984)); see also In re Nunn, 49 B.R. 963, 965 (Bankr. E.D. Va. 1985) (sealing customer list because allowing "a competitor access to [creditor's] customer list would obviously have an adverse effect on [creditor]").

11. An essential component of the Settlement Agreement with Activision is that the amounts and terms included in the Settlement Agreement be kept confidential. Accordingly, the Debtors agreed to file this Motion.

12. The Debtors will deliver copies of the Settlement Agreement to chambers for in camera review by the Court and to the Office of the United States Trustee for the Eastern District of Virginia and counsel to the Creditors' Committee.

13. The terms of the Settlement Agreement should not be made public because doing so would violate the confidentiality clause of the Settlement Agreement and, by disclosing commercially sensitive information with respect to Activision, would discourage future confidential settlements. Due to the confidential and/or proprietary and sensitive nature of the Settlement Agreement, the Debtors

respectfully submit that good cause exists for the relief requested.

14. The Debtors propose to serve this Motion upon: (i) the Office of the United States Trustee for the Eastern District of Virginia, (ii) counsel to Creditors' Committee; (iii) parties who have requested notice pursuant to Bankruptcy Rule 2002; and (iv) the Core Group (as defined in the Case Management Order entered on December 30, 2009 at Docket No. 6208). The Debtors submit that, under the circumstances, no other or further notice of the Motion is required.

**WAIVER OF MEMORANDUM OF LAW**

15. Pursuant to Local Bankruptcy Rule 9013-1(G), and because there are no novel issues of law presented in the Motion and all applicable authority is set forth in the Motion, the Debtors request that the requirement that all motions be accompanied by a separate memorandum of law be waived.

**NO PRIOR REQUEST**

16. No previous motion for the relief sought herein has been made to this or any other Court.

**CONCLUSION**

WHEREFORE the Debtors respectfully request that the Court enter an order substantially in the form of Exhibit A attached hereto and grant the Debtors such other and further relief as is just.

Dated: Richmond, Virginia MCGUIREWOODS LLP  
April 27, 2010

/s/ Douglas M. Foley  
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Sarah B. Boehm (VSB No. 45201)  
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*Counsel to the Debtors and  
Debtors in Possession*

**EXHIBIT A**

Douglas M. Foley (VSB No. 34364)  
 Sarah B. Boehm (VSB NO. 45201)  
 MCGUIREWOODS LLP  
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IN THE UNITED STATES BANKRUPTCY COURT  
 FOR THE EASTERN DISTRICT OF VIRGINIA  
 RICHMOND DIVISION

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In re:	:	Chapter 11
	:	
CIRCUIT CITY STORES, INC.,	:	Case No. 08-35653 (KRH)
<u>et al.</u> ,	:	
	:	
Debtors.	:	Jointly Administered
- - - - -	x	

**ORDER AUTHORIZING DEBTORS TO FILE EXHIBIT UNDER SEAL**

Upon the motion (the "Motion")<sup>1</sup> of the Debtors for an Order, pursuant to section 107(b)(1) of the Bankruptcy Code and Rule 9018 of the Federal Rules of Bankruptcy Procedure, wherein the Debtors requested authority to file certain documents under seal; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the

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<sup>1</sup> Capitalized terms used herein shall have the meanings ascribed to such terms in the Motion.

Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby,

**ORDERED, ADJUDGED, AND DECREED that:**

1. The Motion is GRANTED
2. The Debtors are authorized to file the Settlement Agreement under seal and provide copies of the Settlement Agreement to Chambers for in camera review, to the Office of the United States Trustee for the Eastern District of Virginia and to counsel for the Creditors' Committee.
3. This Order shall be a final order approving the Settlement Agreement in accordance with the Settlement Procedures Order.
4. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Order.

Dated: Richmond, Virginia  
\_\_\_\_\_, 2010

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UNITED STATES BANKRUPTCY JUDGE

WE ASK FOR THIS:

/s/ Douglas M. Foley  
Douglas M. Foley (VSB No. 34364)  
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**CERTIFICATION OF ENDORSEMENT UNDER LOCAL RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Douglas M. Foley

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